

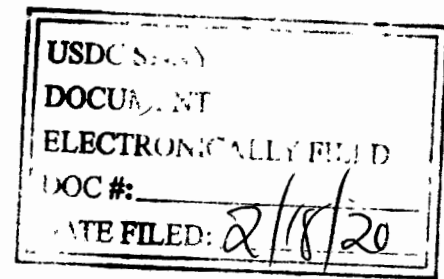
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

-v-

DAMIAN BROWN,

Defendant.
-----x



05-cr-538 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

In a pro se letter dated January 1, 2020, defendant Damian Brown requested the Court to assign a federal defender to represent him in a 28 U.S.C. § 2255 motion in light of Rehaif v. United States, 139 S. Ct. 2191 (2019). ECF No. 203. On January 20, 2020, the Court denied the request, as his rationale for the request was totally lacking in merit. ECF No. 204.

In response, Mr. Brown sent another pro se letter dated February 10, 2020 to the Court, which will be docketed shortly. The letter erroneously states that the Court's denial of his request to appoint counsel was "without prejudice (presumably permitting the defendant to file another application for appointment of counsel by articulating specific meritorious issues in a successive post conviction motion)." This is not true, because the request for appointment of counsel was denied on the merits, and therefore is a denial with prejudice.

Elsewhere in his letter, however, Mr. Brown asks that his January 1, 2020 letter, ECF No. 203, not be construed as a successive § 2255 motion. Accordingly, the Court hereby directs the Clerk of the Court not to transfer the January 1, 2020 letter (ECF No. 203) to the Court of Appeals for the Second Circuit,¹ or to recall the January 1, 2020 letter if it already has been transferred as such.

SO ORDERED.

Dated: New York, NY
February 14, 2020


JED S. RAKOFF, U.S.D.J.

¹ In other words, this Order supersedes the January 20 Order directing the Clerk of the Court to transfer the January 1, 2020 letter to the Court of Appeals for the Second Circuit. See ECF No. 204, at 1.